

E-FILED on 3/21/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.,
PETER BESSELINK, MEMORY METALS
HOLLAND, B.V.,

Defendants.

No. C-04-03843 RMW

ORDER DENYING KENTUCKY OIL'S
MOTION TO ENLARGE TIME FOR FILING
MOTIONS TO COMPEL; GRANTING
MEMRY'S REQUEST IN PART TO ALLOW
TAKING ONE ADDITIONAL DEPOSITION

[Re Docket Nos. 437, 438, 510]

KENTUCKY OIL TECHNOLOGY, N.V.,

Counterclaimant,

v.

MEMRY CORPORATION and
SCHLUMBERGER TECHNOLOGY
CORPORATION,

Counterdefendants.

Recently, the parties have filed certain discovery-related motions to be decided by this court.
First, on February 12, 2007 plaintiff and counterdefendant Memry Corporation filed an objection to

ORDER DENYING KENTUCKY OIL'S MOTION TO ENLARGE TIME FOR FILING MOTIONS TO COMPEL; GRANTING
MEMRY'S REQUEST IN PART TO ALLOW TAKING ONE ADDITIONAL DEPOSITION—No. C-04-03843 RMW
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1 the magistrate judge's determination limiting Memry and STC to a combined total of ten depositions
2 per Federal Rule of Procedure 30(a)(2)(A). The court confirmed the ten-deposition limit, but
3 tentatively granted Memry's request to take three additional depositions, which Kentucky Oil
4 opposes.

5 Second, on February 27, 2007 Kentucky Oil moved to enlarge time to file five discovery
6 motions. Kentucky Oil's motion came four days after the court's February 21, 2007 deadline for
7 filing discovery motions. Two motions are based upon based on an asserted waiver of attorney-
8 client privilege and work product doctrine (a motion to compel discovery concerning STC's
9 "reasonable beliefs" as to Memry's Rights and motion for discovery concerning STC's evaluation of
10 Shell's intellectual property); two motions seek sanctions and further discovery regarding a recently-
11 deposed STC witness, Zaki Selim (a motion to compel further deposition of Mr. Selim and a motion
12 for sanctions for, *inter alia*, conduct at Mr. Selim's deposition); and one motion seeks production of
13 a memorandum from Memry. STC and Memry oppose this motion.

14 **A. Additional Memry Depositions**

15 Kentucky Oil opposes this court's tentative order granting Memry's request to take the
16 depositions of United Stenting, Mr. Shukov and Mr. Vanderbruggen. Kentucky Oil argues that
17 Memry has not shown good cause to take these depositions. It also contends that Memry
18 misrepresents the facts when it states it had no basis to know that these witnesses related to United
19 Stenting would have relevant information on the damages asserted by Kentucky Oil until Kentucky
20 Oil served its Third Amended Initial Disclosure on January 11, 2007. As Kentucky Oil points out,
21 the same language used in the Third Amended Initial Disclosure was also included in its Second
22 Amended Initial Disclosure served on December 18, 2006. It also points out that United Stenting
23 was originally a party to this action.

24 The court nevertheless agrees with Memry that permitting a deposition of a United Stenting
25 witness is appropriate given Kentucky Oil's second and third amended disclosures. Because
26 Memry's motion seeking the additional discovery was made before the magistrate judge prior to the
27 end of the discovery period, the motion is not untimely. The court will, however, limit Memry to
28 one additional deposition, either that of Mr. Shukov, Mr. Vanderbruggen or a single 30(b)(6)


1 witness for United Stenting. Memry may choose which of the three individuals it deposes. The
2 court will not entertain further motions to increase the deposition limits in this case.

3 **B. Motion to Enlarge Time**

4 The fact discovery cut-off in this case was February 9, 2007. Local Rule 26-2 provides that
5 no motions to compel fact discovery may be filed more than seven court days after the fact
6 discovery cut-off, or February 21, 2007. Kentucky Oil sought permission to file five discovery-
7 related motions on February 28, 2007, four court days after the deadline for filing discovery
8 motions.

9 The discovery and motion practice in this case have been excessive. It is time to bring
10 matters to a close. Therefore, the court is unwilling to extend the deadline for bringing motions to
11 compel. However, nothing in this order should be interpreted as precluding Kentucky Oil from
12 objecting to the admission of evidence that was previously withheld as attorney-client privileged or
13 protected by the work product doctrine.

14
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16 DATED: 3/21/07



RONALD M. WHYTE
United States District Judge

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Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

Dated: 3/21/07

/s/ MAG
Chambers of Judge Whyte